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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee.

Application 10-01-012
(Filed January 5, 2010)

**JOINT RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE
LAW JUDGE ADOPTING PROCEDURAL PROCESS FOR THIRD-PARTY
BILLING CONTRACT AS REQUIRED BY REMAND FROM
CALIFORNIA SUPREME COURT**

Summary

This ruling adopts a process for California-American Water Company (Cal-Am) to obtain Commission authorization to provide billing and collection service to the Monterey Peninsula Water Management District.

1. Background

This proceeding began on January 5, 2010, when Cal-Am filed this application seeking Commission approval of “a program to fund projects currently performed by the District that are properly the Company’s responsibility” by authorizing Cal-Am to “collect funds required by the [District] to carry out projects on behalf of the Company and which the Company would otherwise have to carry out.”¹ In its application, Cal-Am stated that the State Water Resources Control Board has imposed a “contingent obligation” on

¹ Application at 2-3.

Cal-Am to implement the Management District's Carmel River Mitigation Program, should the Management District ever cease doing so.²

On January 25, 2016, the California Supreme Court issued its Order in Case No. S208838. The Order set aside Commission Decision (D.) 11-03-035 as well as the Commission's decision denying rehearing, D.13-01-040. The Court remanded the proceeding to this Commission for further proceedings consistent with the views expressed therein.

In its Order, the Court analyzed Cal-Am's obligations under State Water Control Board Order No. WR 95-10. The Court held that Cal-Am is not under a present duty to perform the mitigation work required by the State Water Control Board Order and that the Monterey Peninsula Water Management District has an independent duty to perform the mitigation work:

Indeed, under the Water Control Board's Order No. WR 95-10, Cal-Am's legal obligation to do the mitigation work is contingent on the District ceasing to do that work; because the District has not ceased to do that work, Cal-Am has no present obligation to perform the work at issue. The District is a public agency charged by statute with the task of managing water resources in the Monterey Peninsula area, including the conservation of ground and surface water and the protection of the environment. The District therefore has an independent interest in the mitigation work. The fact that the District's work also fulfills Cal-Am's legal obligation, without more, does not establish that the District is acting as Cal-Am's agent. The PUC has thus failed to identify any sound basis for exercising authority over the fee at issue in this case.³

² Application at 10.

³ Monterey Peninsula Water Management District v. Cal. Public Utilities Commission, California-American Water Company, S208838 at 11.

The Court held that this Commission lacks ratemaking review authority over the District's mitigation program to comply with State Water Control Board's Order No. WR 95-10 because the District has an "independent interest" in performing the mitigation work. Similarly, because the District is performing the mitigation work, Cal-Am has no present obligation to perform the work at issue.

On March 30, 2016, we issued a ruling seeking comment from the parties on whether any issues remaining pending before the Commission in this proceeding. The District stated that the Commission should issue an order authorizing Cal-Am to "resume collection of the User Fee."⁴ Cal-Am asks that the Commission "issue an order authorizing reinstatement of the MPWMD user fee without delay."⁵

While the Supreme Court opinion contemplates potential collection of the User Fee on Cal-Am's customer bills, and forecloses Commission reasonableness review of that fee, it also does not suggest the Commission can simply "authorize reinstatement" of the District's fee using past practices.

The Court nullified the Commission's previous rationale that the District's fee should properly be placed on Cal-Am's bills as surcharge to recover mitigation costs that were properly "Cal-Am's responsibility."⁶ Instead, the

⁴ District Opening Comments at 9.

⁵ Cal-Am Reply Comments at 2.

⁶ Opinion at 9.

Court described Cal-Am's relationship with the District as a "billing service"⁷ and the District's fee as a "third party charge[] . . . on a public utility's bill."⁸

Accordingly, the now-nullified rationale and previous billing and collection procedure must be changed to conform to the Court's holding that Cal-Am is providing a billing service for third party charges from the District.

2. Requirements for Public Utilities Offering Third-Party Billing Service

Statutes and decisions established in the telecommunications industry may provide a reasonable framework for accommodating a third-party billing arrangement between Cal-Am and the District. As set forth in Commission Decisions 00-03-020 and 00-11-015, for example, public utilities are prohibited from disconnecting basic utility service for non-payment of other services and third-party charges must be separately stated. Additional requirements for third-party billing service are found in Public Utilities Code (Pub. Util. Code) §2890, including a mandate that bills "may only contain charges for products or services, the purchase of which the subscriber has authorized," among many others.

In providing a third-party billing service, public utilities must ensure that ratepayers are not subsidizing the service and must charge the third-party the cost of such service. In many cases, the Commission has authorized using a fully allocated cost methodology. Public utilities must provide the third-party billing service on a non-discriminatory basis consistent with Pub. Util. Code § 453.

⁷ Opinion at 8.

⁸ Opinion at 7.

Cal-Am will need to clearly inform its customers that it is including the District's charges on a customer's water bill as a third-party billing service, and that any disputes should be directed to the District.

3. Record Development to Support Contract or Tariff Filing

So far as the record shows in this proceeding, no written document covers the terms and conditions under which Cal-Am provides third party billing services to District. As set forth in section 326 of the Monterey Peninsula Water Management District Law:

The District shall have the power to:

. . .

(d) To provide that charges for any of its service or facilities may be collected together with, and not separately from, the charges for other services or facilities rendered by it, or it may contract that all such charges be collected by any other private or public utility, and that such charges be billed upon the same bill and collected as one item.⁹

Telecommunications corporations providing third-party billing services typically do so by tariff, but a Commission-approved contract is another option.

4. Next Steps

If Cal-Am would like to develop a tariff or negotiate a contract with the District to provide third-party billing services, then Cal-Am should pursue one of those options and file an amendment to this application seeking Commission for approval.

⁹ Monterey Peninsula Water Management District Law, reprinted in West's Water Code Appendix at §118-326.

Customers will need notice of this new arrangement and an opportunity to comment. Customer outreach and meetings will be necessary to adequately inform Cal-Am's customers about Cal-Am's decision to provide third-party billing services to the District.

As set forth above, the existing record in this proceeding does not address the post-remand issues in this proceeding. Therefore, to prepare a record for Commission consideration, any amendment to the application should address the following issues:

1. Proposed Tariff or Special Contract. The new tariff or contract should include:
 - a. The terms and conditions under which Cal-Am proposes to provide billing services to the District and any similarly-situated entities.
 - b. Clear provisions to ensure privacy of customer information in Cal-Am's possession in compliance with Cal-Am Tariff Rule 23.
 - c. Specific measures to clearly inform customers that the fee originates with District and inquiries about or objections to the fee must be directed to the District, not Cal-Am nor the Commission.
 - d. Explicit provisions to inform customers that their public utility water service will not be disconnected for failure to pay the District's fee; that nonpayment of the District's fee will not impact the status of payment of Cal Am's water bill, *i.e.* failure to pay the District's fee will not affect the determination of whether the Cal Am account is paid in full; and that late payment charge is not applicable to any unpaid balance of the District's fee.
 - e. Means to ensure that billing service customers such as the District are properly charged for the cost to provide such billing services, including provisions to recover cost of incremental customer service representative time

to refer customers to District. Cal-Am shall provide a cost estimate using a fully allocated methodology. Cal-Am may also provide additional cost estimates using other methodologies. If Cal-Am does provide additional cost estimates, it should also provide a rationale as to why the Commission should use a methodology other than fully allocated cost.

- f. Should Cal-Am believe that costs should be recovered by the general body of ratepayers in a General Rate Case, Cal-Am shall provide a legal basis for not recovering these costs from the District.
 - g. Clear statement that Cal Am will be providing billing service only and that any collection efforts for non-payment of District fees are the explicit responsibility of the District.
2. Public Outreach Plans
- a. Detailed plan to inform customers and seek comment on Cal-Am's application to provide billing services to the District, that the new charge on the Cal-Am bill will be shown as being from the District, that public utility water service will not be disconnected for non-payment of the District's charges, and that the District is responsible for calculating the charge such that all disputes regarding the charge must be directed to the District.
 - b. Public Process Report. To be submitted by Cal-Am at the conclusion of the public process setting forth a summary of the outreach, analysis of the comments, and supporting rationale for the final proposal.

Cal-Am should confer with the Commission's Water Division as needed in preparing its amendment to this application. The amendment should be filed

and served within 60 days, but if necessary, Cal-Am may request an additional 60-day extension from the assigned Administrative Law Judge.

IT IS SO RULED.

Dated August 3, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge